



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R08-OAR-2013-0474; FRL- 9846-9

Approval and Promulgation of Air Quality Implementation Plans; Utah; Revisions to Utah Administrative Code and an Associated Plan Revision.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the State of Utah on September 20, 1999. The September 20, 1999 submittal revised the numbering and format of the Utah Administrative Code (UAC) rules within Utah's SIP. In this action, EPA is acting on those rules from the September 20, 1999 submittal that still require EPA action. Specifically, EPA is proposing to approve R307-110-16, "Section IX, Control Measures for Area and Point Sources, Part G, Fluoride," and to disapprove R307-110-29, "Section XXI, Diesel Inspection and Maintenance Program." In conjunction with our proposed disapproval of R307-110-29, we are also proposing to disapprove the Utah Diesel Inspection and Maintenance Program, which Utah submitted as a revision to the SIP on February 6, 1996, and which was incorporated by reference in R307-110-29 as part of the September 20, 1999 submittal. This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before [insert date 30 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2013-

0474, by one of the following methods:

- www.regulations.gov. Follow the on-line instructions for submitting comments.
- E-mail: ostendorf.jody@epa.gov
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2013-0474.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact

information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-7814, or ostendorf.jody@epa.gov.

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials PM₁₀ mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).
- (iv) The initials PM_{2.5} mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).
- (v) The initials SIP mean or refer to State Implementation Plan.
- (vi) The words State or Utah mean the State of Utah, unless the context indicates otherwise.
- (vii) The initials UAC mean or refer to the Utah Administrative Code.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. Background

Utah's September 20, 1999 submittal revised the numbering and format of the Utah Administrative Code (UAC) rules within Utah's SIP. The purpose was to provide for a more consistent numbering system and a coherent structure allowing provisions to be located more easily within Utah's rules.

On February 14, 2006 (71FR 7679), we approved many of the re-numbered rules from the September 20, 1999 submittal, but we deferred action on others or explained why no action on the rules was necessary.¹ In subsequent rulemaking actions, we acted on other rules from the September 20, 1999 submittal, or on later versions of the rules that superseded the version submitted on September 20, 1999. In this action, we are acting on those rules from the September 20, 1999 submittal that still require EPA action.² Specifically, we are proposing to approve R307-110-16, "Section IX, Control Measures for Area and Point Sources, Part G, Fluoride," and we are proposing to disapprove R307-110-29, "Section XXI, Diesel Inspection and Maintenance Program." In conjunction with our proposed disapproval of R307-110-29, we are also proposing to disapprove the Utah Diesel Inspection and Maintenance Program (Section XXI of the Utah SIP), which Utah submitted to EPA as a SIP revision on February 6, 1996 and which R307-110-29 of the September 20, 1999 submittal incorporated by reference.

In the docket for this proposal, we have included a table that lists the rules from the September 20, 1999 submittal that are not addressed by today's action and that explains why no action on such rules is required.

III. What Action is EPA Proposing and Why?

¹ On April 18, 2007 (72 FR 19383), EPA issued a correction notice that corrected certain aspects of the regulatory text in EPA's February 14, 2006 action.

² Under a February 2, 2010 settlement agreement with WildEarth Guardians, as amended on June 30, 2011, EPA is required to sign a proposed rulemaking action on the September 20, 1999 submittal by July 31, 2013, and a final rulemaking action by December 20, 2013.

A. R307-110-16, “Section IX, Control Measures for Area and Point Sources, Part G, Fluoride.”

We are proposing to approve the renumbering of R307-110-16, “Section IX, Control Measures for Area and Point Sources, Part G, Fluoride.” This provision incorporates by reference Utah SIP Section IX, Part G, as amended by the Utah Air Quality Board on December 18, 1992, into the UAC.

In our October 13, 2005 proposed rule on Utah’s September 20, 1999 submittal (70 FR 59681), we did not propose to act on the renumbering of R307-110-16. As our reason, we stated: “Utah repealed this rule from the federally approved SIP in their June 17, 1998 SIP submittal that EPA approved on May 20, 2002 (67 FR 35442).” (70 FR 59687) That statement was incorrect. The May 20, 2002 action did not remove R307-110-16 (under its previous numbering) or associated Utah SIP section IX, Part G from the SIP. Instead, that action removed R307-1-4.11, “Regulation for the Control of Fluorides from Existing Plants” from the SIP, in part based on the dismantling of the only facility to which the provision applied. In fact, on June 25, 2003 (68 FR 37744), we approved the renumbering of Utah SIP Section IX, Part G, and this section remains in the SIP. However, we have not acted on the corresponding renumbering of R307-110-16 in the September 20, 1999 submittal. As R307-110-16 merely incorporates by reference SIP Section IX, Part G, which itself is currently in the SIP, we propose to approve the renumbering of R307-110-16.

B. R307-110-29, “Section XXI, Diesel Inspection and Maintenance Program.”

We are proposing to disapprove R307-110-29, “Section XXI, Diesel Inspection and Maintenance Program.” R307-110-29 incorporated by reference the Utah Diesel Inspection and Maintenance Program (Section XXI of the SIP), as adopted by the Utah Air Quality Board on

July 12, 1995 (and submitted to EPA on February 6, 1996), which we have not acted on previously. In our October 13, 2005 notice of proposed rulemaking (70 FR 59681), we stated that we would not act to approve R307-110-29 because the rule incorporated by reference Utah's February 6, 1996 SIP submittal. We noted that we would address the February 6, 1996 SIP submittal at a later date (70 FR 59687). We restated our intentions in our final rule of February 14, 2006 (71 FR 7679) in which we noted that we would act on R307-110-29 when we acted on Utah's February 6, 1996 SIP submittal (71 FR 7681). With this proposed rule, we are proposing to disapprove the State's February 6, 1996 submittal of its Diesel Inspection and Maintenance Program (see section III.C. below). Therefore, EPA is also proposing to disapprove R307-110-29 because it incorporates by reference the State's Diesel Inspection and Maintenance Program that we are proposing to disapprove.

C. Utah SIP Revision: Section XXI, "Diesel Inspection and Maintenance Program."

We are proposing to disapprove Utah's Diesel Inspection and Maintenance Program contained in Section XXI of the Utah SIP, which Utah submitted on February 6, 1996 (hereafter, the "Program"). The Program requires the inspection of diesel-powered vehicles by means of an emissions opacity test. The opacity of vehicle emissions is measured, using what is known as a snap-idle opacity test, to determine the need for vehicle repair and maintenance. Utah adopted the Program with the goal of reducing particulate emissions from diesel vehicles in the PM₁₀³ nonattainment areas along the Wasatch Front – namely, Davis, Salt Lake, and Utah Counties.

Our proposed disapproval is based on several issues. First, relevant literature and studies indicate that there is not an accepted correlation between opacity and particulate matter mass emissions in diesel vehicles. Given this lack of correlation between opacity and PM mass emissions, it is unlikely that the snap-opacity test is a good predictor of PM emissions, and the

³ Particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM₁₀).

State has not provided data to support a different conclusion. Second, the Governor's February 6, 1996 submittal of the Program did not specify a number of critical parameters, such as the relevant opacity limits or specifications for test equipment. While many of the missing parameters were included in revisions to Davis, Salt Lake, and Utah Counties' inspection and maintenance ordinances that the Utah Division of Air Quality forwarded to us on April 12, 2006, the State did not amend Section XXI of the SIP to include the revised ordinances, and the Governor did not submit such an amendment to us to replace the version submitted on February 6, 1996. Therefore, the Program as submitted is not enforceable as a practical matter. Finally, relevant literature and studies suggest that adjusting diesel vehicles to reduce the opacity of emissions may result in an increase in emissions of nitrogen oxides (NO_x), which are precursors to the formation of $\text{PM}_{2.5}$ ⁴, PM_{10} , and ground level ozone. It is possible, therefore, that repairing vehicles to the opacity test could exacerbate the PM challenge in Utah, and the State again has not provided data to contradict this possibility. We note that on November 13, 2009, Davis, Salt Lake, and Utah Counties were designated nonattainment for the 2006 24-hour $\text{PM}_{2.5}$ NAAQS (74 FR 58688). Also, both Salt Lake and Utah Counties retain their original legal designation of nonattainment for PM_{10} .

We are unable to conclude that approval of the Program would strengthen the SIP or would be consistent with the requirements of CAA section 110(l). Section 110(1) states that a SIP revision cannot be federally-approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. The potential increase in NO_x emissions from the Program could interfere with attainment or reasonable further progress towards attainment of the $\text{PM}_{2.5}$ NAAQS in the relevant counties. We have no conclusive data to

⁴ Particulate matter with an aerodynamic diameter less than or equal to 2.5 microns ($\text{PM}_{2.5}$).

show that the potential benefits of the Program outweigh the potential emission increases with respect to pollutants of concern. Furthermore, the State has not provided data that would support the benefits it ascribes to the Program. Instead, it references a 1988 study that attempts to indirectly infer a level of emission reductions resulting from fixing a statistically insignificant number of old-technology diesel vehicles to reduce exhaust opacity, but without conducting the type of before-and-after-repair mass-emission transient testing on the contemporary fleet of diesel vehicles needed to actually quantify any potential impacts on emissions.

For the foregoing reasons, we are proposing to disapprove Section XXI of the SIP, “Diesel Inspection and Maintenance Program,” as submitted by the State on February 6, 1996.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law that meets federal requirements and proposes to disapprove state law that does not meet federal requirements; if finalized as proposed, this action would not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq*

Dated: July 30, 2013.

Shaun L. McGrath,
Regional Administrator,
Region 8.

[FR Doc. 2013-19597 Filed 08/13/2013 at 8:45 am; Publication Date: 08/14/2013]